



Department of Veterans Affairs

## APPEAL TO BOARD OF VETERANS' APPEALS

**IMPORTANT:** Read the instructions on the next page before filling in this form. Complete all items fully. Send this appeal to the local Department of Veterans Affairs (VA) office which made the decision being appealed.

**RESPONDENT BURDEN:** Public reporting burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to VA Clearance Officer (723), 810 Vermont Avenue, NW, Washington, DC 20420; and to the Office of Management and Budget, Paperwork Reduction Project (2900-0085), Washington, DC 20503. **Please do not send applications for benefits to these addresses.**

1. LAST NAME - FIRST NAME - MIDDLE NAME OF VETERAN (Type or print)

2. INSURANCE FILE NO., OR LOAN NO.  
(If pertinent)

3. CLAIM FILE NO. (Include prefix)

4. IF APPEAL IS BEING MADE BY A PERSON OTHER THAN VETERAN, INDICATE RELATIONSHIP

☐ WIDOWER ☐ CHILD ☐ MOTHER ☐ FATHER ☐ OTHER (Specify)

5. NAME OF APPELLANT (If other than veteran)

6. ADDRESS OF APPELLANT (Number & Street, City, State & ZIP Code)

**REPRESENTATION:** You have a right to a representative. You may have only one representative at a time with respect to a given claim. See paragraph 1 under "General Information."

**HEARING:** You have a right to a personal hearing although a hearing is not necessary to complete your appeal. A personal hearing will not expedite the decision process as no decision is made at the time of a hearing. See paragraph 6 of "General Information." Decisions of the Board of Veterans' Appeals (BVA) are based on the entire evidence of record in accordance with the applicable laws and regulations. VA files necessary to your appeal and all documents you have already submitted will be available to the Board. A hearing provides an opportunity for you, the appellant, to be personally present and to present oral testimony and argument. The Government cannot reimburse you for the expense which you, your representative, or your witnesses incur.

7A. DO YOU WISH TO APPEAR PERSONALLY AT A HEARING BEFORE A MEMBER OF THE BOARD OF VETERANS' APPEALS?

☐ YES ☐ NO (If you checked "NO" your appeal will be reviewed on all the evidence now of record.)

7B. IF YOU CHECKED "YES" INDICATING THAT YOU AND YOUR REPRESENTATIVE (IF ANY) DESIRE A HEARING, PLEASE SPECIFY WHAT KIND. PLEASE CHECK ONLY **ONE** OF THE FOLLOWING BOXES:

☐ I WILL APPEAR PERSONALLY IN WASHINGTON, DC, BEFORE THE BVA.

☐ I WILL APPEAR PERSONALLY AT A LOCAL VA OFFICE BEFORE THE BVA.

(NOTE: Requests for hearings before the BVA at a local VA office are granted in the order of the time of receipt of the requests by the local VA office. Because the frequency of Travel Board hearings is subject to available funds, only a few such hearings are available at certain regional offices. Travel Board hearing slots are assigned on a first come, first served basis. If there are no available slots for the next visit, your request will be placed in a pending status. Contact your local regional office as to the frequency of the Travel Board visits, the length of the visit, and the expected waiting period for a hearing slot.)

**IMPORTANT:** If you do not check a box, it will be assumed that you do not wish a personal hearing before the BVA.

8. I HEREBY PETITION THE BOARD OF VETERANS' APPEALS FOR RELIEF AS SET FORTH BELOW. (State in specific detail the benefits sought on appeal and your reasons for believing that the action appealed is erroneous. Read carefully paragraphs 1 through 5 of the "Instructions".)

Continue on reverse, if necessary

9. SIGNATURE OF APPELLANT (Or representative)

10. DATE

## INSTRUCTIONS

### 1. FORM OF APPLICATION

By filing this form, you complete your appeal. The benefit sought must be clearly identified. In preparing your appellate argument in the space provided (Item 8), care should be taken to set out errors of fact or law believed to have been made in the determination - that is, the reasons for disagreeing with the determination being appealed. Appeals which fail to allege specific error of fact or law in the determination being appealed may be dismissed by the BVA. As much as possible, relate all statements to specific items in the Statement of the Case and identify any statement of fact in the Statement of the Case with which you disagree. (The term "Statement of the Case" includes the Statement of the Case and any Supplemental Statements of the Case you may have received.) However, even though you do not take exception to certain facts in the Statement of the Case, you will not be presumed to be in agreement with such facts. If you do not wish a BVA decision on an issue which was presented in the Statement of the Case, you should state that you are withdrawing the issue. If you do not withdraw an issue, you will receive a BVA decision on every issue set out in the Statement of the Case. Only those issues set out in the Statement of the Case may be considered by the BVA. **DO NOT ADD NEW ISSUES TO THOSE ALREADY PRESENTED IN THE STATEMENT OF THE CASE.**

*(NOTE: If you wish to raise a new issue (one which was not considered in the Statement of the Case or in any Supplemental Statements of the Case which you have already received) you must first present the new issue to the appropriate VA regional or other VA field office in the form of a new claim and receive a determination from that office. If the field office denies your new claim, you may then appeal the denial by submitting a Notice of Disagreement to that office, following which that office will provide you with either a Statement of the Case or a Supplemental Statement of the Case on the denial of your new claim. In either case, you must then complete a separate Substantive Appeal (VA Form 9) [formerly VA Form 1-9] with respect to the new issue. To prevent the time for completing your current appeal from expiring, you should NOT delay completing this form with respect to your current appeal until action is completed on your claim regarding any new issues.)*

### 2. WHO CAN SIGN A SUBSTANTIVE APPEAL

A Substantive Appeal (this VA Form 9 {formerly VA Form 1-9}, or equivalent) may be signed by the following:

- (a) The appellant personally.
- (b) The appellant's representative, provided a proper power of attorney is filed, or an attorney or agent, provided a proper declaration of representation is filed.
- (c) The guardian or other proper fiduciary of an incompetent claimant, or, if none, by the next of kin or next friend.

### 3. TIME LIMIT FOR FILING

A Substantive Appeal should be filed within 60 days from the date the Statement of the Case is mailed. A 30-day time limit applies where 2 or more contesting claimants are involved and where one claim is allowed and another denied, or allowance of one claim would result in a lesser payment to another claimant. An extension of time may be granted for good cause. A Substantive Appeal postmarked prior to expiration of the applicable period will be accepted as timely filed. (38 U.S.C. 7105(d)(3), 7105A(b) [formerly 4005(d)(3), 4005 A(b)])

### 4. PLACE TO SEND SUBSTANTIVE APPEAL

The Substantive Appeal should be mailed to or filed with the VA office which entered the determination being appealed. Normally, this will be the office where your records are located.

### 5. SUBMISSION OF ADDITIONAL EVIDENCE

When a Substantive Appeal is timely filed, your local VA office will grant a reasonable time, if requested, to file additional evidence. Once you have been notified that your case has been transferred to the BVA, any and all additional evidence should be submitted directly to the BVA not later than 90 days following the date of the notice letter.

## GENERAL INFORMATION

### 1. REPRESENTATION

You may be represented in the presentation of your claim by a recognized service organization provided a proper power of attorney is furnished, or by an attorney or agent provided a proper declaration of representation is furnished. Only one representative is permitted at any one time in the prosecution of a specific claim. A form for designating your representative may be obtained from the local VA office.

### 2. FEE LIMITATIONS

Accredited representatives of a recognized service organization, acting in that role, may not charge you a fee for their representation. Agents accredited for practice before VA and attorneys are permitted to charge you a reasonable fee when certain conditions are met. In connection with a proceeding before VA, no fee may be charged, allowed, or paid for services of attorneys or agents with respect to services provided before the date on which the BVA first makes a final decision in the case. Such a fee may be charged, allowed, or paid for services provided after such date only if an agent or attorney is retained with respect to such case before the end of the 1-year period beginning on that date. (38 U.S.C. 5904(c)(1)) A copy of any fee agreement must be filed with the BVA within 30 days of the commencement of the representational activity which follows a final BVA decision by mailing a copy to the following address: Office of Counsel to the Chairman (01C), Board of Veterans' Appeals, 810 Vermont Avenue, NW, Washington, DC 20420. Fee agreements may be reviewed by BVA on its own motion or on the motion of a party to the fee agreement. A decision by the BVA as to the reasonableness of the fee agreement may be appealed to the U.S. Court of Veterans Appeals (the Court).

### 3. APPEAL OF BVA DECISION

A final BVA decision, which follows a Notice of Disagreement filed on or after November 18, 1988, may be appealed to the U.S. Court of Veterans Appeals (the Court). A notice of appeal must be filed with the Court within 120 days from the date of the decision. A copy of the notice of appeal should also be furnished the Secretary of the Department of Veterans Affairs by mailing a copy to the following address: VA General Counsel (027), 810 Vermont Avenue, NW, Washington, DC 20420. (While a copy of your notice of appeal to the Court should be filed with the VA General Counsel, the Court is not a part of VA and filing a copy of your notice of appeal with the General Counsel, the BVA, or any other VA office will **NOT** protect your right of appeal.)

### 4. REOPENING A CLAIM

If your claim is denied by either the BVA or the Court, you may reopen your claim with VA by submitting new and material evidence to the appropriate local VA office. Should the local VA office determine that your additional evidence is not new and material, you may appeal that determination.

### 5. RECONSIDERATION

You may file a motion requesting reconsideration of a BVA decision if you believe that the BVA committed obvious error of fact or law; that new and material evidence in the form of relevant service records or reports has been discovered; or that the Board's grant of benefits was materially influenced by false or fraudulent evidence submitted on your behalf. The motion, which may be in the form of a letter, should set forth clearly and specifically the basis for the motion. Motions for reconsideration should be filed with the Board of Veterans' Appeals, 810 Vermont Avenue, NW, Washington, DC 20420.

### 6. HEARING BEFORE THE BVA - GENERAL (*Read carefully*)

a. *Hearing Granted If Desired, and Conducted Informally.* A hearing will be granted when you, or your representative acting for you, express a desire to be present in person. The BVA operates under Rules of Practice, but its procedures are informal. They are designed to make it easy for you or your representative to present testimony and argument relevant and material to the appellate issue. Strict rules of evidence are not followed. A personal hearing is not required. All evidence on file is thoroughly considered regardless of whether a hearing has been held. Following your hearing before a Member of the Board, your case will be decided by a Section of the Board, which will include the Member of the Board who conducted your hearing.

**IMPORTANT:** *If you wish to appear personally at a hearing, such request should be made by completing items 7A and 7B, indicating the place of hearing (see subparagraph c below).*

b. *Who May Appear.* You may appear alone, if you are unrepresented, or with a representative when you present your testimony. Either you or your representative may arrange for the appearance of witnesses to testify.

c. *Place of Hearing.* A hearing may be held at one of the following places:

(1) In Washington, DC, before a Member of the Board of Veterans' Appeals.

(2) In a VA field office before a traveling Member of the Board of Veterans' Appeals conducting a Travel Board hearing. (See paragraph 7.)

**(NOTE: There is no provision for the Government to bear any expense incurred by the appellant, his or her counsel, or witnesses in connection with attendance at a hearing.)**

### 7. TRAVEL BOARD HEARINGS

(a) *Request for a Travel Board Hearing.* A request for such a hearing should be submitted in writing to the local VA office which denied your claim. Such requests will be honored in the order in which they are received by the agency of original jurisdiction which will keep a hearing docket of the requests. A request for a Travel Board hearing may result in delay in the processing of the claim because Travel Board hearing dates are limited and each appellant who desires such a hearing must wait his or her turn.

(b) *Changing a Scheduled Travel Board Hearing Date.* Requests for a change in hearing date may be made prior to the scheduled date of the hearing. If good cause for the change is shown, the appellant will not lose his or her place on the hearing docket and another hearing will be scheduled for the next available Travel Board hearing date. If good cause is not shown, the appellant may appear at the originally scheduled hearing or may request another hearing. If another hearing is scheduled, the priority position on the hearing docket is lost and the appellant must take another place in line. The determination by the field that good cause for changing a hearing date is not shown will be reviewed by the Member of the traveling Section of the BVA who will make the final determination.

(c) *Failure to Appear for a Scheduled Hearing.* The failure to appear for a scheduled personal hearing without prior notification will be construed as a withdrawal of the request for a hearing, and no further request for a hearing will be granted in the same appeal unless such failure to appear was for good cause. If a new hearing date is desired, the appellant must file such a request in writing within 15 days of the originally scheduled hearing date and show good cause as to why he or she failed to appear without prior notification. Such requests must be filed with the Office of Counsel to the Chairman (OIC), Board of Veterans' Appeals, 810 Vermont Avenue, NW, Washington, DC 20420. If good cause is shown, the hearing will be rescheduled for the next available hearing date. The Member of the traveling Section originally scheduled to conduct the hearing will determine whether good cause is shown.

## **8. ORDER OF CONSIDERATION**

Appeals are docketed and considered in the order in which they are received, except that for sufficient cause the BVA may advance a case on the docket. (38 U.S.C. 7107 [formerly 4007]) In order to advance a case on the docket, a motion showing good cause must be submitted to the Office of Counsel to the Chairman (01C), Board of Veterans' Appeals, 810 Vermont Avenue, NW, Washington, DC 20420.

### **PRIVACY ACT NOTICE**

The information requested on this form is solicited under 38 U.S.C. 7105(d)(3) [formerly 4005(d)(3)]. This form, when completed, is the vehicle which you use to present your appeal to the Board of Veterans' Appeals. It is used by VA and the Board in processing your appeal and by the Board in deciding your appeal. Completion and filing of this form with VA is mandatory for completion of your appeal. Failure to furnish this information will have no effect on any benefit to which you may be entitled other than the benefit, or benefits, you are seeking on appeal. The information may be disclosed outside of VA as permitted by law and as stated in the notices pertaining to VA's systems of records which are periodically published in the Federal Register in accordance with the Privacy Act of 1974. Examples of situations in which the information included in this form might be released to individuals outside of VA include release to the United States Court of Veterans Appeals, should you appeal the Board of Veterans' Appeals decision in this case to that court; disclosure to a medical expert outside of VA, should VA determine that a request for an opinion from such an expert under the provisions of 38 U.S.C. 5109 or 7109 [formerly 3009 or 4009] is appropriate; disclosure to law enforcement personnel and security guards in order to alert them to the presence of a dangerous person; disclosure to law enforcement agencies should a violation of law be indicated; disclosure to a congressional office in order to answer an inquiry from the congressional office made at your request; and disclosure to Federal government personnel who have the duty of inspecting VA's records to make sure that they are being properly maintained. See the Federal Register notices described above for further details.